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REMARKS

Claims 1-39 as amended by preliminary amendment filed September 23, 2005 are in the application.

Claims 1-39 stand rejected.

Claims 1 and 19 stand rejected under 35 USC 102 as anticipated by U.S. Patent 5,428,844 ("Dougherty").

Claim 2 stands rejected under 35 USC 103(a) as unpatentable over Dougherty in view of U.S. Patent 6,025,287 ("Hermann").

The Examiner has not specifically set forth any rejection for claim 3 and the Examiner has not specifically set forth the basis for rejection of claim 4.

It is assumed for purpose of this response that claims 3 and 4 are rejected under 35 USC 103(a) as unpatentable over Dougherty in view of Hermann.

Claims 5-8, 10, 12-15, 17, 21, 23-26, 30-33, 35 and 37 stand rejected under 35 USC 103(a) as unpatentable over U.S. Patent 3,906,548 ("Kallis") in view of Dougherty.

Claims 9, 11, 16, 18, 20, 22, 27, 29, 34, 36, 38, and 39 stand rejected under 35 USC 103(a) over Kallis in view of Dougherty and further in view of Hermann.

Claim 1 recites:

A sweat band, comprising:
 a hydrophilic foam core; and
 a moisture wicking fabric covering said foam core, said moisture wicking fabric being disposed to contact the head of a wearer of said sweat band.

The Examiner in rejecting claim 1 states that Dougherty teaches a sweatband "...comprising a hydrophilic foam core (see column 2, lines 4-6) and a fabric at 12, 14 for contacting the head of the wearer. Doughty (sic) further teaches a fabric having moisture wicking properties (Col. 2, line 4)."

It is respectfully submitted that Dougherty neither teaches a hydrophilic foam core nor does Dougherty teach a moisture wicking fabric.

Dougherty, col. 2, lines 4-6 states:

The fabric is made of sweat-absorbing material and contains a cushioning element, such as foam, that absorbs sweat and provides comfort at the same time

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A sweat-absorbing material is not a moisture wicking material. An absorbing material is one that sucks up or takes up and holds moisture. A moisture wicking material is one which "wicks" the moisture away from the moist surface.

As clearly set out in Applicant's specification:

[10024] Sweat band 100 includes a sweat band portion 101, an adjustment portion 103 and one or more attachment portions 105. Sweat band portion 101 is formed from a piece of moisture wicking fabric 111 such as COOLMAX® which is a high tech fabric available from Dupont. This fabric is made from specially engineered polyester fibers with an increased surface area. The surface 101a of the fabric 111 in contact with skin pulls moisture away from the skin to its opposite surface.

This is contrasted with the fabric that is described in Dougherty that absorbs and holds moisture much like a sponge.

Based on the foregoing, Dougherty does not disclose or suggest a moisture wicking fabric. Accordingly, Dougherty does not show, teach or suggest the novel structure of claim 1.

Claim 19 has been amended to recite:

said fabric comprising a moisture wicking fabric, said moisture wicking fabric wicking moisture contacting its outer surface to said foam core

For the same reason that claim 1 is not shown, taught or suggested by Dougherty, claim 19 is likewise not shown, taught or suggested by Dougherty.

Claims 2-4 all depend from claim 1 and add further limitations. For the same reason that claim 1 is not anticipated by Dougherty, claims 2-4 are not shown, taught or made obvious by Dougherty in combination with Herman.

Claims 20-22 all depend from claim 19 and add further limitations. For the same reason that claim 19 is not shown, taught or made obvious by Dougherty, claims 20-22 are likewise not shown taught or made obvious by Dougherty in combination with other references.

Claims 5-8, 10, 12-15, 17, 21, 23-26, 30-33, 35 and 37 stand rejected under 35 USC 103(a) as unpatentable over U.S. Patent 3,906,548 ("Kallis") in view of Dougherty.

Claim 5 recites:

A sweat band for use in a helmet, said helmet comprising a suspension web disposed therein, said suspension web including a headband, said sweat band comprising:

a sweat band portion comprising:

a hydrophilic foam core; and

a moisture wicking fabric covering said foam core;

an attachment portion coupled to said sweat band portion for releasable affixing said sweat band portion to the suspension web of a helmet.

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The Examiner cites Kallis for teaching a helmet having a cushion 40 and an attachment portion 42. The Examiner acknowledges that Kallis does not teach "the cushion portion comprising a hydrophilic foam core and a fabric covering said foam core." The Examiner cites Dougherty as teaching a cushion comprising "a hydrophilic foam core... and a fabric...covering foam core 30."

Claim 5 recites "a moisture wicking fabric covering said foam core." As pointed out with respect to claim 1, Dougherty fails to show, teach or suggest the use of a wicking fabric.

Kallis likewise fails to show, teach or suggest the use of a wicking fabric. Accordingly, claim 5 is not shown, taught or made obvious by the references taken singly or in combination.

Claims 6-11 depend from claim 5 and add further limitations. For the same reason that claim 5 is not shown, taught or made obvious by the references taken singly or in combination, claims 6-11 are likewise not shown, taught or made obvious by the references taken singly or in combination.

Claim 12 recites "a moisture wicking fabric covering said foam core." As pointed out with respect to claims 1 and 5, Dougherty fails to show, teach or suggest the use of a wicking fabric.

Kallis likewise fails to show, teach or suggest the use of a wicking fabric. Accordingly, claim 12 is not shown, taught or made obvious by the references taken singly or in combination.

Claims 13-18 depend from claim 12 and add further limitations. For the same reason that claim 12 is not shown, taught or made obvious by the references taken singly or in combination, claims 13-18 are likewise not shown, taught or made obvious by the references taken singly or in combination.

Claim 23 has been amended to add:

said fabric cover comprising a moisture wicking fabric, said moisture wicking fabric wicking moisture contacting its outer surface to said foam core

Claim 30 has similarly been amended to add:

said fabric covering comprising a moisture wicking fabric, said moisture wicking fabric serving to wick moisture contacting its outer surface to said foam core

Claim 37 as previously presented recites:

a moisture wicking fabric covering said foam core, said moisture wicking fabric being disposed to contact the head of a wearer of said head covering

For the same reason that claims, 1, 5, 12, and 19 are not shown, taught or made obvious by the references taken singly or in combination, claims 23, 30 and 37 are likewise not shown, taught or made obvious by the references taken singly or in combination.

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Claims 24-29 depend from claim 23; claims 31-36 depend from claim 30; and claims 38-39 depend from claim 37 and for the same reason that the parent claims are not shown, taught or made obvious by the references taken singly or in combination claims 24-29, 31-36 and 38-39 are likewise not shown, taught or made obvious by the references taken singly or in combination.

Based on the foregoing, all the claims are allowable. Reexamination and reconsideration are requested. It is further requested that the claims be allowed and this application be passed to issue.

Respectfully submitted,

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